

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

*Networking Computing, USA, Inc.*, 2008 WL 724155 (E.D.N.Y. Mar. 13, 2008) (internal quotations and citation omitted).

The attorneys' fees portion of the settlement is equal to less than one-third of the settlement amount and only slightly more than counsels' lodestar. Approval Application at 3 and Ex. C. Accordingly, the fee amount is reasonable as well.

However, two aspects of the settlement agreement warrant further discussion. First, the agreement calls for the parties to exchange mutual general releases. Settlement Agreement ("SA") ¶ 4. During a telephone conference held on June 21, 2019, *see* Dkt. 38, the Court expressed concern about whether it was proper for a settlement agreement in an FLSA case to include a general release. On June 24, 2019, defendants submitted a letter brief, Dkt. 39, pointing to precedents supporting approval of general releases where they are mutual and involve only named plaintiffs and not members of a class or collective action. *See, e.g., Burgos v. Ne. Logistics, Inc.*, 2018 WL 2376481, at \*4, 6 (E.D.N.Y. Apr. 26, 2018), *report and recommendation adopted*, 2018 WL 2376300 (E.D.N.Y. May 24, 2018) ("[W]hen general releases are reciprocal, courts in this Circuit have been much more tolerant"); *Bukhari v. Senior*, 2018 WL 559153, at \*2 (S.D.N.Y. Jan. 23, 2018) (holding that the proposed broad release provision may be approved if it is either amended to be a narrower release, or if a "concrete and persuasive explanation of the practical benefit [plaintiff] stands to realize in exchange for broadly releasing all claims against defendants" is presented); *Snead v. Interim HealthCare of Rochester, Inc.*, 286 F.Supp.3d 546, 553 (W.D.N.Y. 2018) (holding that a general release provision that releases both parties from all claims arising from plaintiff's employment with defendant is valid when the terms are mutual and have been negotiated by competent counsel, and when plaintiff is no longer employed by defendant).

Saldarriaga is the sole plaintiff in this action and is no longer employed by the defendants. Moreover, in their June 24 letter brief, defendants contend that plaintiff was fired for cause, and that the circumstances of his termination could give rise to a significant cause of action against him. Dkt. 39 at 2. Accordingly, defendants' execution of a general release has practical and not merely theoretical significance to plaintiff. I accordingly approve the release provision of the settlement agreement.

In my further review of the agreement, though, I became concerned about a second provision that was not discussed during the June 21 telephone conference. The agreement includes a non-disparagement clause. SA ¶ 8. Courts have held that such clauses "contravene the remedial purposes" of the FLSA unless they include a "carve-out for truthful statements" about a plaintiff's experience litigating his case. *Lazaro-Garcia v. Sengupta Food Services*, 2015 WL 9162701, at \*3 (S.D.N.Y. Dec. 15, 2015). *See also Weng v. T&W Rest., Inc.*, 2016 WL 3566849, at \*4 (S.D.N.Y. June 22, 2016). The non-disparagement clause does not include the required carve-out for truthful statements about the litigation.

For the reasons stated above, all aspects of the agreement are approved with the exception of the non-disparagement clause. Counsel shall submit a revised version of the agreement with a carve-out included in the non-disparagement clause, or a letter brief explaining why the Court should approve the agreement in its current form, by July 16, 2019.

SO ORDERED.

/s/  
STEVEN M. GOLD  
United States Magistrate Judge

Brooklyn, New York  
July 3, 2019

U:\Saldarriaga settlement.docx